

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, DELHI.

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| REGN. No. O.A. 822 of 1986 | ..... | 3rd August, 1987. |
| Dr. V.P. Malik             | ..... | Applicant         |
|                            | V/s.  |                   |
| Union of India & Others    | ....  | Respondents       |

PRESENT

Shri Ajit Puddusary for the applicant.

Smt. Raj Kumar Chopra for the respondents.

CORAM

Hon'ble Shri B.C. Mathur, Vice-Chairman.

This is an application under Section 19 of the Administrative Tribunals Act, 1985 challenging order No.F.6-25/85-Admn 1-A dated 28.6.1986 and order No. A. 26021/9/86-CHS-V dated 27.6.1986 (annexure 3 to the application). By these impugned orders, the applicant was denied benefit of fixation of his salary at a higher scale on account of his previous service in the Army and of one advance increment for having promoted small family norms.

2. The applicant has stated that he was granted short service commission in the Army on 14.7.1969 and served in the Army till 11.8.1974. After release, he applied for the post of lecturer in Forensic Science in the Central Health Services and was selected for the post by the Union Public Service Commission and appointed thereto in 1981. It was mentioned in the appointment letter that the scale of pay will be fixed in the pay scale of Rs. 1100-1800, according to rules. After joining, the petitioner represented that his pay be fixed taking into account his Army service as was being done in the case of other short service commission officers who joined civil posts after their release. However, the petitioner's pay was fixed at the minimum of the scale.

3. The petitioner has also claimed one increment for having undergone vasectomy operation in April, 1984. His claim was rejected on the ground that under the circular of the Health Ministry, increment was given only to employees who underwent operation after having two children. The petitioner had one child when he had the operation. Subsequently through another circular dated 6.1.1985, this benefit was extended to employees having even one child but the petitioner was not given this benefit on the ground that he had undergone the operation on 26.4.1982 before the issue of the subsequent circular.

4. As far as the applicant's claim for advance increments due to his Army service is concerned, it should be regulated by O.M. No. 3/1/82-Estt (P.1) dated the 29th November, 1984 issued by the Department of Personnel & Administrative Reforms which allows concession of higher pay to Emergency Commissioned Officers and Short Service Commissioned Officers who joined pre-commissioned training or were commissioned after 10.1.1968. In their statement, the respondents have said that the pay of the petitioner has been fixed under these rules after taking into account the Army service rendered by him. It has been stated that the petitioner served as a Short Service Commissioned Officer in the Army from 14.7.1969 to 11.8.1974. He was appointed as lecturer of Forensic Medicine under Central Health Service with effect from 23.10.1981 in the scale of pay of Rs. 1100-5-1500-EB-60-1800. Under the Department of Personnel O.M.No. 9/24/71-Estt.C dated 1.1.1972, those Emergency Commissioned Officers/Short Service Commissioned Officers who were commissioned or joined the pre-commissioned training between 1.11.62 and 10.1.1968 were given the benefit of counting their service rendered in the Defence Forces towards pay fixation on their subsequent appointment in civil posts against unreserved vacancies on the assumption that they would have been appointed to the service or post, as the case may be,

on the date arrived at after giving credit for their approved military service as ECOs/SSCOs. Since the petitioner had joined Short Service Commission in the Army on 14.7.1969, he was not entitled to the benefit of the above mentioned orders on his joining the civil post on 23.10.1981. Orders dated 1.1.1972 which were extended vide O.M.No. 9/26/74-Estt.C, dated 6.1.1975, were not applicable to the SSCOs who were commissioned after 10.1.1968 as the special concession was given to pre 10.1.1968 ECOs/SSCOs under specific circumstances to compensate those who volunteered their services in response to the call of the nation during the National Emergency from 1.1.1962 to 10.1.1968 and as a result of which they missed opportunities for taking up Civil employment. The same condition cannot be applied to all persons who joined the Armed Forces after 10.1.1968, on their own initiative as a choice of their career in their own interest. In the case of SSCOs who were commissioned in the Defence Forces after 10.1.1968, their subsequent appointment in the Civil posts was treated as a fresh appointment and their pay was fixed under normal rules i.e. at the minimum of the pay scale of the post to which they were appointed. However, according to Department of Personnel's O.M.No. 3/1/82-Estt (Pay-1) dated 29.11.1984<sup>since</sup>, all financial sanctions are made effective from a prospective date, the O.M. of 29.11.84 was also given effect from 1.11.1984 and no arrears were allowed on account of fixation of pay under these orders. Thus, according to the respondents, no discrimination has been shown against SSCOs who were commissioned after 10.1.68 in the matter of payment of arrears.

5. The learned counsel for the applicant has said that it is not true that the National Emergency existed only from 1.11.1962 to 10.1.1968 and that there have been wars and aggressions after that and as such the concession should be available to everyone whether he was in the Defence Forces between 1.11.1962 to 10.1.68 or even later. *Concession cannot be claimed as a matter of right.* However, there does not seem to be any real conflict between the point of view of the applicant and the respond-

ents. Both agree that the case should be governed by O.M. dated 29th November, 1984 issued by the Department of Personnel & Administrative Reforms which has decided how the pay of those ECOs/SSCOs who joined the precommissioned training after 1.10.1968 should be fixed on their appointment to the civil post. According to this O.M. it was decided that these officers should be granted advance increments equal to the completed years of service rendered by them in the Armed Forces on a basic pay equal to or higher than the minimum of the scale attached to the civil post. The pay so arrived at should not, however, exceed the basic <sup>pay</sup> last drawn by them in the Armed Forces. The question, therefore, to decide is what was the last basic pay of the applicant when he was released from the Army.

6. The learned counsel for the respondents showed a telegram and noting which indicate that the last pay drawn by the applicant at the time of his release was Rs. 1250/- whereas the applicant has filed an affidavit that his last pay was Rs. 1350/-. His point is that while in the Army service <sup>he</sup> was in the revised scale of pay of Rs. 1100-50-1500 and after giving one increment for every year of service rendered (service of five years), his pay at the time of release from Army was Rs. 1350/- and not Rs. 1250/- as averred by the respondents. He says that this is also mentioned in the Government of India publication "Armed Forces Personnel and Civilians in Defence Establishment Book on Service Conditions 1985" This book was not produced as it was not available. The only question to decide is whether the pay of the applicant was Rs. 1250 or Rs. 1350/- at the time of his release. This should not be very difficult to resolve. The respondents are directed to get this information from the Ministry of Defence and the pay fixed accordingly. Respondents may also examine the "Armed Forces Personnel and Civilians in Defence Establishment Book on Service Conditions, 1985" if it gives adequate information. But in any case, it should not be difficult for Government to find out what exactly was the pay of an officer at a particular time, and then fix his salary at the appropriate stage.

9

7. Coming to the second issue, namely, refusal to give one increment to the applicant even though he had undergone vasectomy operation, the learned counsel for the applicant has pointed out that the interpretation by the Government of the first circular would be violative of Article 14 of the Constitution if the applicant was denied benefit of one increment. The circular had put a condition that an increment would be given only to such employees who have two or three surviving children. The learned advocate for the applicant emphasises that the said clause in the circular must read to mean "an employee who does not have more than two or three children" and could not mean that an employee who had less than two or three children is not eligible for increment for undergoing an operation. Any other interpretation instead of encouraging a small family would require a Central Government employee to have two or three children to get benefit under the circular. According to him, the object of the circular clearly is to encourage employees to undergo sterilisation operation and those with less than two or three children who undergo operation, they cannot be denied the said benefit. This would defeat the object of the said circular dated 4.12.79 (Annexure E to the application). The fact that later Government changed the conditions and persons with even one child were allowed the benefit of one increment shows the intention of the Government. According to the learned advocate for the applicant, it is clear that there is no nexus between the classification and the objectives of the rules and, therefore, the condition that an employee must have two or three children before getting the incentive must be held violative of Article 14 of the Constitution.

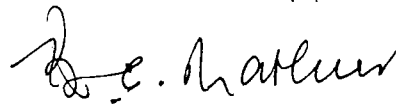
8. The respondents in their reply have stated that when the applicant had undergone operation on 26.4.1982, grant of special increment for undergoing sterilisation operation was governed by the Ministry of Finance O.M. dated 4th December, 1979 (Annexure E to the petition) which lays down that the employee must be

70

within the reproductive age group and that the employee should have two or three living children and in the case of the applicant this condition was not satisfied. The incentive of special increment was subsequently extended to employees having one living child, but this concession was admissible to a Government employee or his spouse who undergoes sterilisation operation on or after the date of the issue of orders i.e. 6.12.1985. As such the applicant was not entitled to one advance increment. It was not the policy of the Government prior to April 1985 to encourage small family norms to the couples having less than 2 children. Government of India have been propagating small family norms for a long time and have offered various incentives from time to time according to their policy. At one time, the policy of the Government was to encourage families to have not more than two or three children. In order not to have more than three children, incentive was given to persons having not more than two or three children. The incentive was given to those who had two or three children and they got themselves sterilised. At that time, the policy of the Governments appears to be that they would encourage people to have upto two or three children but no more. Later, the Government even agreed to give incentives to persons having only one child. The argument of the learned advocate for the applicant that there is no nexus between the classification of family norms and the objectives of the rules and that the denial of incentives to persons having only one child would be violative of the Constitution does not appear to be correct. Government policies have been changing from time to time and one can <sup>not</sup> be given benefit retrospectively. If it is taken that Government must provide incentive to everyone, ensuring a small family, then persons having no child and undergoing sterilisation would also be entitled to advance increments. Perhaps it is not the intention of the Government to do so. Persons not marrying at all may claim incentives under such conditions. Provision of incentives is a matter of Government policy

and not a matter of right of any citizen. The applicant who himself is a doctor perhaps would have undergone sterilisation to ensure a small family for himself even if there was no incentive. A number of people who underwent vasectomy operation prior to the incentive scheme cannot claim any advance increment because such an incentive was not admissible to them earlier. There is, therefore, no merit in the applicant's claim for granting an advance increment and the respondents have, therefore, rightly rejected his claim for the advance increment.

9. The application is allowed partly. The respondents would reconsider the question of fixation of his salary in the scale of Rs. 1100-1800 according to rules after ascertaining in a proper way the salary drawn by the applicant at the time of his release from the Army. The fixation of pay should be done within three months from the date of receipt of the orders by the respondents. The other relief sought by the applicant asking for an advance increment as incentive for a small family norm is rejected. There will be no order as to cost.

  
(B.C. Mathur)  
Vice-Chairman  
3.8.1987